IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4088 OF 2005

M/s. Raffle Square Development Pvt. Ltd., ..Petitioners.

Versus

Moti Dinshaw Irani & Ors. ..Respondents.

Dr. Tulzapurkar with R.D.Soni i/by Ram & Co. for the Petitioners.

Mr. J.S. Kini for Respondents 1 and 2.

CORAM : S. A. BOBDE, J.

DATED : 19TH JULY, 2005.

P.C.:

1. Rule, returnable forthwith.

2. Mr. Kini, learned Advocate waives service of rule for the Respondents.

3. Heard by consent.

4. The petitioners are aggrieved by concurrent orders of the courts below, granting a temporary injunction against them. By the temporary injunction, the courts below have restrained the petitioners from carrying out any new construction over the suit bungalow or any part thereof. This injunction is granted in regular civil Suit No. 138/2005.

5. The suit property is bungalow No. 13, situate in Survey No. 17/A/2, Final Plot No.293, CTS No. 371-B at Koregaon Park, Pune. The suit is filed by the respondents 1 and 2, who are the widow and son respectively, of one Dinshaw Irani. Dinshaw Irani was the brother of Dara, Fardoon and Khudaram Irani, who are the sons of Kaikhusroo. The petitioners have purchased the said suit property from Dara and Kaikhusroo under a registered sale deed dated 25th June, 2004, which is at Exh. ‘A’ to the petition. They are Defendant No.2. This property has been purchased by the petitioners admittedly when an earlier suit being civil Suit No. 134/1995, was pending. Therefore, one of the questions that squarely arises is whether the petitioners have

acquired title in respect of the suit property. Prima facie, it appears, they have. Civil suit No. 134/1995 was also filed by the present respondents, namely, Moti Dinshaw Irani and Jehangir Dinshaw Irani. That suit was filed against Dara, Khudaram and Fardoon, who are admittedly the brothers of Dinshaw. That suit was for partition, in which an injunction was granted, restraining the defendants therein, namely, Dara and others named above, from alienating the property or creating third party interests. The defendants then carried the matter in Appeal before this court. A learned single Judge of this court in the said Appeal From Order No. 697/1996 granted stay of the injunction dated 03.03.1995 with regard to the properties described in Annexures E and H-3, submitted before the court below. Admittedly the suit property is a part of Annexure E.

6. This Appeal From Order was eventually disposed of by another learned single Judge of this Court on 29.7.2003, wherein the learned single Judge vide para 3 of the order observed - "this Court has vacated the injunction order granted by the trial court on 3.2.1996 with regard to Annexure -E and H-3." Having regard to the circumstances of the case, the Appeal

from Order was disposed of with the direction to the IIIrd Jt. C.J.S.D. Pune, to dispose of the civil Suit No. 134/1995. Apparently, the said suit is still pending. In these circumstances, I am, prima facie, of view that no injunction was operating when the petitioners had purchased the suit property from Dara and Faredoon.

7. Thereafter, the respondents 1 and 2 issued a notice to the petitioners calling upon them to forthwith stop demolition work of the suit property and not to proceed with construction or alienation of any construction thereof. Admittedly, by now the bungalow, which stood on the suit property, stands demolished.

8. The petitioners not having complied with the notice, the respondents have filed present suit and sought injunction, restraining the petitioners from alienating, transferring, disposing off or creating third party interest in the suit property. This prayer was granted by the learned trial court vide order dated 3.3.2005. Against that order, the petitioners preferred an Appeal which was heard by 10th Adhoc Additional District Judge Pune. The

appellate court has upheld the grant of injunction.

9. A reading of the order of the appellate court shows that the injunction is basically granted on the premise that Dinshaw Irani i.e. husband of respondent No.1 and the father of respondent No.2, held the suit property in common with his brothers, namely, Dara and Faredoon. The learned appellate court has relied on the proceedings under the Urban Land (Ceiling and Regulations) Act, 1976 in a part of which it has recorded that Dara Irani, Faredoon Irani, Dinshaw (respondents predecessor) and Khudaram K. Irani held certain properties jointly. There is no doubt that, and this is also the submission on behalf of the petitioners that certain properties were held jointly, as is apparent from the order of the competent authority dated 29.8.1978 under section 84 of the Urban Land (Ceiling and Regulations) Act, where the learned appellate authority has observed as follows :-

> " Sarvashri Dara K.Irani, Dinshaw K. Irani, Farudding K. Irani and Khudaram K. Irani have filed their statements u/s. 6(1) of the Urban Land (C&R) Act, 1976. From the perusal of statements it is noticed that number of

properties are held jointly by these four persons. All these cases are therefore, required to be considered, heard and decided jointly."

10. However, it is clear that neither this statement nor any other portion of that order shows that this suit property has been jointly held by all the brothers namely, Dara, Faredoon, Dinshaw and Khudaram. The appellate court, therefore, has no where pointed out specifically from the order under the Urban Land (C & R) Act or from any other order that the suit property was held jointly by the aforesaid brothers.

11. On the other hand, the learned counsel for the petitioners relied on the final statement under the Maharashtra Regional Town Planning Act, vide page 48 of the paper book, which shows that the suit property is owned by Dara and Faredoon. Prima facie, having regard to section 88 of the Maharashtra Regional Town Planning Scheme Act, 1966 and the judgement of this court reported in 1984 (1) Bom. C.R. 468 in the case of Dinkar Ramchandra Honale & Ors. vs. The Municipal Corporation of Greater Bombay, this has effect of

extinguishing of rights of any other claimant in the property in a final statement. It is therefore, clear that the suit property was owned jointly only by Dara and Faredoon, who sold it to the petitioners under the aforesaid sale deed.

12. The learned counsel for the petitioners also referred to the final statement under the Urban Land (C & R) Act, from which it is clear that the suit property is shown in the name of Dara and Faredoon Irani, being the property situate at Koregaon Park, Pune -411 001. In contrast, in the same statement certain other property is shown as belonging to Dara, Dinshaw, Faredoon and Khudaram. I have, therefore, no hesitation in coming to the prima facie conclusion that the suit property belongs to Dara and Faredoon, who sold it to the petitioners and therefore, the petitioners acquired a right to deal with the property. In these circumstances, I am of view the finding recorded in the negative form in the Appellate Court that it cannot be said that Faredoon or Dara alone have right to hold the suit property shown against their names in the final statement, is prima facie not correct. The order suffers from an error apparent on its face in that there is nothing

specifically referred to, which show that the property in question was jointly owned by Dara and Faredoon along with Dinshaw i.e. the predecessor in interest of the respondents.

13. I am, therefore, of view that the petitioners having purchased the property for the purpose of development and construction and having acquired title thereto have a consequent right to deal with the property in question.

14. In passing, it may be noticed that in the earlier suit, the respondents have filed three applications. One application is at Exh. J-2 of the paper books, which was to restrain the defendants therein i.e. Dara and Faredoon from demolishing the property and from alienating and transferring the same. The respondents also filed another application for restraining Dara and Faredoon and their builder and developer, presumably the petitioners from carrying out any new construction. They also filed an application for joining of the petitioners as a party. It appears that they did not pursue these applications and instead chose to file separate suit, which is the present suit by excluding therein their family members

i.e. Dara and Faredoon from array of party.

15. In these circumstances of the case, I am of view that the respondents have no prima facie right to an injunction in respect of the suit property. The balance of convenience is in favour of the petitioners, who have invested in the suit property for its development and construction. In the circumstances, having regard to the fact that the property has been purchased by the petitioners for the purpose of development, the grant of continuation of injunction would cause an irreparable harm to the petitioners .

16. In the circumstances, the impugned order is set aside. Rule is made absolute.

17. At this stage, Mr. Kini, the learned counsel for the respondents therein prays for some time before this order takes effect in view of the fact that the injunction has been in force since March, 2005. Having regard to this circumstance, this order shall remain stayed for a period of six weeks from today.

19.07.2005 (S.A.BOBDE,J.)

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